



WISCONSIN REGULATORY DIGEST

A Publication of the DEPARTMENT OF REGULATION AND LICENSING FOR AUCTIONEERS AND AUCTION COMPANIES

Volume 6, No. 2

September, 2001

A Message From the Board Chair Richard Lust

Whenever another issue of the Regulatory Digest is due, I have to sit back and give some thought to what is happening in the auctioneer regulatory arena. Having done so, I would like to share the following thoughts with you. Secretary Marlene Cummings has retired and our new Secretary, Oscar Herrera, has a good hold on the reins. We didn't give Secretary Herrera much breathing time before we brought up an old issue. The Board recommended that mandatory continuing education be put back into the administrative rules and the Secretary immediately began his analysis of the history of this issue and the impact that continuing education has on the Department, licensees and consumers. Be sure to read the article about continuing education elsewhere in this Digest.

Staff members and board members continue to receive inquiries and complaints regarding sellers who bid on their own items as well as about auctioneers who bid on or buy items during their own auctions. The buying public considers these practices to be unethical and it is clear that the Board will have to review these practices at an upcoming meeting.

THE WISCONSIN AUCTIONEER BOARD

Board Members

Richard O. Lust, Chair (Verona)
Marie Skic, Vice-Chair (Merrill)
Robert Brandau, Secretary (Wilton)
Ronald R. Bast (Richfield)
Marie Kohlbeck (Whitelaw)
Robert J. Massart (Green Bay)
Mark Shain (Greenwood)

Administrative Staff:

Cletus J. Hansen, Division Administrator

Executive Staff:

Oscar Herrera, Secretary
William Conway, Deputy Secretary
Myra Shelton, Executive Assistant

I have also received an inquiry from one of our auditors regarding the ethics and accepted standards for auctioneers requiring their purchasers to make their payments directly to the sellers, thus possibly by-passing trust account and record keeping rules. The Board may have to give you more guidance about whether these practices are in the best interests of your client, the seller? Does your contract allow for this type of payment practice? What about your duty to collect and pay sales tax on any required sales? Who handles any 'bad checks' submitted as payment directly to your seller? We are concerned about such questionable practices!

I would suggest that you occasionally review the administrative rules concerning the provisions that you must have in your contracts with sellers. Also, recall that you may no longer refer to "buyer's premiums" in your brochures and ads. In place of that term, you must use "buyer's surcharge" or "buyer's fee."

Governor McCallum Appoints Herrera

Governor Scott McCallum announced on March 30, 2001, that he had appointed Oscar Herrera as the Secretary of the Department of Regulation and Licensing. Herrera has served sixteen years in state government including from 1999 to the time of his appointment as the Director of the Bureau of Minority Business Development in the Department of Commerce. From 1992 to 1998 he was the Director of the Wisconsin Coastal Management Program in the

Contents

A Message From the Board Chair Richard Lust	1
Governor McCallum Appoints Herrera	1
Statistics	2
Reciprocity of Registration	2
Mandatory Continuing Education	2
Information on the Internet	3
Stamping "Trust Account" on Checks	3
Disciplinary Actions	3
Telephone Directory & DRL Services	4

Department of Administration, and from 1985 to 1991 worked as a program and planning analyst with the Coastal Management Program. He was twice awarded the Department of Administration's Exceptional Performance Award.

Herrera was born and raised in Mexico City. He obtained a Bachelor's degree in Economics from the National University of Mexico and a Master's degree in Agricultural Economics from the University of Chapingo in Mexico. He also attended the University of Wisconsin-Madison where he obtained a Master's degree in Continuing and Vocational Education and completed Doctoral studies (Ph.D.abd) in Development.

Statistics

As of September 4, 2001, the number of active registered auction companies and auctioneers was:

Temporary Auctioneer Registrations: 3

Auctioneers: 968

Auction Companies: 173

Reciprocity of Registration

The Department of Regulation and Licensing and the Auctioneer Board have entered into reciprocal licensing agreements with the following states: Illinois, Kentucky, North Carolina, Tennessee, Texas, Arkansas and Florida. The most recent agreement was with Florida.

Mandatory Continuing Education

At this time there is no mandatory continuing education for Wisconsin auctioneers. **Auctioneers will not be required to obtain continuing education in order to renew their registration at the end of 2002.** However, the Auctioneer Board and the Wisconsin Auctioneers Association have requested that the Department reestablish continuing education requirements for auctioneers. In response to their requests, Secretary Herrera directed staff to provide information about the impact of continuing education requirements. The following are a few excerpts from the document prepared for the Secretary:

Impact of Mandatory Continuing Education

1. **Positive Impact.** There are approximately 940 auctioneers and 152 auction companies. The Board received 40 complaints against auctioneers and auction companies in 2000. Many complaints relate to advertising requirements, requirements pertaining to a written contract, requirements relating to the maintenance of records and trust accounts, unprofessional conduct, and unlicensed practice. Since the beginning of this regulation, the number of complaints has been relatively high, considering the number of persons who are registered.

2. **Positive Impact.** If the approved continuing education courses specifically cover the statutes and rules that relate to conducting auctions in Wisconsin, one could assume that the consumer should benefit. Courses on Wisconsin sales ~~tax~~ requirements, advertising requirements, minimal standards for contracts and the standards of practice should have a beneficial impact on consumers.

3. **Positive Impact.** There could, conceivably, be fewer complaints against auctioneers, and fewer investigations and prosecutions by staff in the Division of Enforcement.

4. **Positive Impact.** Auctioneers will keep abreast of changes in the law and should, therefore, avoid being a respondent in a disciplinary action. One could assume, too, that there is less likelihood of an auctioneer being the respondent in a civil action.

5. **Positive Impact.** Some auctioneers may perceive mandatory continuing education requirements as professionalizing their industry. Such professionalization enhances their image in the eyes of consumers and others.

6. **Negative Impact.** The Department needs staff and resources to approve courses and instructors, unless the rules are written so that the Department does not have to approve courses and instructors. It is very difficult for the Department to assure competency of instruction, without the expenditure of large sums of money for auditing courses.

7. **Negative Impact.** Auctioneers would incur costs, related to attending continuing education courses. These costs would include course fees, travel expenses and time away from the job.

8. **Negative Impact.** Some courses could be poorly presented and auctioneers attending such courses would feel that the courses are a waste of their time. It is impossible for the Department to assure that all courses are competently presented.

9. **Negative Impact.** Auctioneers who are licensed in more than one state are often required to obtain continuing education courses specific to the states in which they are licensed. Such requirements are extremely burdensome to such licensees, because the licensees may be required to travel to various states for the sole purpose of attending continuing education courses. However, if states accept distance learning courses, this problem can be somewhat alleviated.

10. **Negative Impact.** The Department needs staff and resources to respond to the many questions that auctioneers would have about which courses are approved, where the courses are located and when the courses will be offered.
11. **Negative Impact.** The Department would be faced with the need to determine whether auctioneers have completed the required continuing education. This places an added burden on the renewal process. Furthermore, the Division of Enforcement is often required to handle cases, relating to the failure of a licensee to complete the education or relating to the provision of false statements by licensees about their attendance at courses.

After considering all these factors, as well as the recommendation of the Auctioneer Board, Secretary Oscar Herrera has agreed to promulgate a rule that would require mandatory continuing education when auctioneers renew their registration at the end of 2004. The number of hours and other requirements will be specified in the rule. The rule will most likely permit the attendance of courses by distance learning.

Information on the Internet

The state of Wisconsin now has a relatively-new portal on the Internet that enables persons to access all state agencies and services from this single entry point. The portal is in its infancy stage; however, it will grow and develop very quickly. Simply enter the following Web address: <http://www.wisconsin.gov/>

Then you can click on "Agency Index" and find the Department of Regulation & Licensing in the alphabetical list. Be sure to check out our site, because it has recently been revised and it, too, continues to grow. Please note the new "Search" feature that is now on the Department's Home Page. Eventually, our site will have application forms that you will be able to fill out and submit electronically, as well as more informational documents. At the end of 2000, real estate agents were the first group of licensees that were able to renew their licenses electronically on the Internet. During the next year or two many more organizations and individuals will be able to renew on the Internet.

Be sure to click on some other agencies that provide services that may be beneficial to you. For example, note the information provided by the Department of Financial Institutions (DFI) concerning corporations and LLC's. DFI's Web address is: <http://www.wdfi.org/>

Stamping "Trust Account" on Checks

An auctioneer or auction company may, especially during an interim period, stamp "trust account" on their checks; however, the absolutely most critical consideration is that the account must be designated as a "trust account" at the depository institution. This should remove the likelihood that the trust account funds could be attached in a bankruptcy proceeding involving the auctioneer or auction company.

Disciplinary Actions

STEVEN L GOOD REPRIMAND/FORFEITURE/COSTS SHELDON GOOD & CO AUCTIONS

CHICAGO IL REPRIMAND/FORFEITURE/COSTS
Made deposits into a separate client escrow account instead of the required common trust account. Failed to provide to each owner or consignor of goods or real estate that was sold, or attempted to be sold an accounting of all moneys due. Failed to include registrant's state registration number in the auction agreement and advertising. Costs of \$550.00 and forfeiture of \$1,000.00. Effective 12/11/2000. Secs. 480.16, 480.14(3)(a), Stats. RL 124.02(1), 123.03(1) Case #LS0012112AUC

KENNETH W SPRAGUE KENOSHA WI REPRIMAND/COSTS

Practiced as an auctioneer without a valid license between 1/1/1999 and 11/24/1999. Failed to disburse all auction proceeds within 24 hours after an auction. Pay \$250.00 costs. Successfully complete the auctioneer education examination by 11/26/2001. Effective 2/26/2001. Secs. 480.08(1)(a), 480.24(2)(j), Stats. RL 125.02, 125.05 Case #LS0102261AUC

GENE J FINZ ALBUQUERQUE NM SUSPENDED INDEFINITELY

On 9/25/2000 he was ordered to pay costs of \$250.00 and a forfeiture of \$500.00 by 3/18/2001. He has not made payment and therefore his license is suspended indefinitely until he does make payment. Effective 5/9/2001. Sec. 440.22(3), Stats. Case #LS0006161AUC

DAVE TEPOEL MAPLE WI ADMINISTRATIVE INJUNCTION

Acted as an auction company without having a license. Prohibited from engaging in this conduct until he obtains the appropriate credential. Effective 8/10/2001. Sec. 480.08(1)(b), Stats. Case #LS0108101AUC

TRAVIS L PARR BLAIR WI REPRIMAND/FORFEITURES/COSTS

His license was in an expired status from January 1, 1997 through March 21, 2001. He performed activities that required a license during the period of time he was not actively licensed in Wisconsin. Forfeiture of \$500.00. Costs of \$250.00. Effective 8/27/2001. Sec. 480.08, Stats. Case #LS0108272AUC

MARTIN P KOLL FOND DU LAC WI REPRIMAND/FORFEITURE

His license was not renewed at any time after December 31, 1996, and is currently in an expired status. In December, 2000, he performed activities that required a Wisconsin auctioneer license. Forfeiture of \$500.00. Effective 8/27/2001. Sec. 480.08, Stats. Case #LS0108271AUC

REGULATORY DIGEST

PRSR STD
U.S. Postage
Paid
Madison, WI
Permit No. 1369

RETURN SERVICE REQUESTED

Telephone Directory

The Division of Business Licensure & Regulation has a menu telephone system which is designed to more efficiently direct the caller to the appropriate section. The telephone number for **staff** is:

(608) 266-5511

After dialing this number you are asked to press various extensions. For the following requests, please press extension numbers **as** noted:

Application Forms	Ext. 11
Complaints Against Licensees	Ext. 12
Application Processing & Requirements	Ext. 43
Whether A Person Is Registered	Ext. 442
Fax Number	(608) 267-3816

Board Meetings

Usually the 4th Monday of every other month.

Verifications

Requests for verification of license, sent to other states must be in writing. **The cost is \$10.** Please make out check or money order to the Department of Regulation and Licensing.

Visit the Department's Web Site

www.drl.state.wi.us

For our new "Online Verification of Credential Holders" click on "Business and Professional License Lookup" shown on the Department's home page.

Copies of the Regulatory Digest are on the Web.

Send comments to dorl@drl.state.wi.us

Wisconsin Statutes and Code

Copies of "Statutes and Administrative Code Relating

to the Practice of Auctioneers and Auction Companies" can be ordered from the Department.

Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated August 1999.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes is not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

Subscription Service

Bi-annual digest subscriptions are published for all credentials in the Department at a cost of **\$2.11 each** per year. **CREDENTIAL HOLDERS RECEIVE THEIR REGULATORY DIGEST FREE OF CHARGE.** Others may send the fee and this form to the address listed above.

Subscription Service Order Form

Name

Company/Organization

Street Address/P.O. Box

City/State/Zip +4

County

Digest(s) desired:

G:digests/auctioneers 0901.doc